

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS
and DETERMINATION REPORT**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Phyllis Cornell
	Certification Number:	20217
	Business Name:	Phyllis J. Cornell Private Fiduciary, LLC
	Certification Number:	N/A
	Type of Certificate/License:	Individual Fiduciary
<i>COMPLAINANT</i>	Name:	David T. Wright
<i>INVESTIGATION INFORMATION</i>	Complaint Number:	15-0006
	Investigator:	Pasquale Fontana

Complaint Received:	March 9, 2015
Complaint Forwarded to the Certificate Holder:	March 19, 2015
Certificate Holder/Licensee Received Complaint:	March 24, 2015
Response From Certificate Holder:	April 27, 2015
Period of Active Certification/Licensure:	April 28, 1999 - Present
Status of Certification/License:	Active
Availability of Certificate Holder/Licensee:	Available
Availability of Complainant:	Available
Report Date:	December 15, 2015

ALLEGATIONS:

1. Complainant alleges Phyllis Cornell took months to respond to his inquiries and she did not respond to his certified letter
2. Complainant alleges Phyllis Cornell paid for questionable and unexplained expenses
3. Complainant alleges Phyllis Cornell failed to properly investigate Trust assets
4. Complainant alleges Phyllis Cornell questionably moved Trust assets

ADDITIONAL ALLEGATIONS:

5. Phyllis Cornell charged fiduciary fees and allowed legal fees to be charged to the estate to respond to and defend a regulatory complaint.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

- Written complaint and documentation submitted by complainant, David T. Wright (“Wright”)
- Written response and documentation submitted by certificate holder, Phyllis Cornell (“Cornell”) and her attorney, Sally Simpson (“Simpson”)
- Review of applicable Certification and Licensing Division (“Division”) records
- Review of applicable sections of Arizona Revised Statutes (“ARS”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-202, and Arizona Supreme Court Rules
- Interview with Wright
- Interview with Cornell and attorney, Simpson; and Cornell’s assistant Heather Cannon (“Cannon”)
- Interview with Alan White (“Alan”) and his attorney, James Pat Egbert (“Egbert”)

PERSONS INTERVIEWED:

1. David Wright
2. Phyllis Cornell
3. Sally Simpson
4. Heather Cannon
5. Alan White

SUMMARY OF INVESTIGATION:

Wright, a beneficiary of the Wright Family Trust (“the Trust”), alleged Cornell, as Trustee, ignored many of his inquiries into the administration of the Trust or she took months to respond to his queries. He alleged Cornell failed to fully investigate the Trust assets because she was not aware of three annuities that had payable upon death designations, and alleged Cornell allowed the Trust to pay for questionable and unexplained expenses. Wright further alleged Cornell “questionably” moved Trust assets but acknowledged that no money was missing or misused. Wright said Cornell did not provide an accounting of her expenses although he acknowledged that he was given a Profit and Loss accounting.

Several days after Ruthe Wright (“Mrs. Wright”) died and Cornell became the Trustee for the Trust, she met with Wright and his brother, Alan, and reviewed the terms of the Trust, explained her role and responsibility and informed Wright that the Trust would be administered in accordance with his mother’s wishes and would maintain the household in the same manner it was prior to her death. Cornell believed that the meeting and subsequent written correspondence sent to Wright provided sufficient information and she did not want to continually respond to his inquiries over trivial expenses such as the “cable bill” and “toilet rebates” because doing so would not be cost beneficial to the estate.

Cornell acknowledged that she moved money from one account into another account when she realized that Wright had access to the account. Cornell believed that she had discussed her fees with Wright when they initially met and discussed her role and responsibilities.

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:

1. On March 9, 2015, the Division received a written complaint stating:

Please see attachments. Continued questions go unanswered for months. Questionable expenses go unexplained. Questionable moving of trust assets. Did not do a thorough investigation into all facets of the family trust assets. No response to certified letter.

The complainant included a number of emails he sent to Cornell and her attorney, Simpson, as well as information from Cornell's filed accounting for the estate.

On April 6, 2015, Complainant sent email correspondence to the Division stating, in part, that Cornell did not provide a fee schedule or an explanation of her expenses against the trust.

2. On April 27, 2015, Cornell sent a written response to the complaint stating, in part, that required additional time to submit a full response. She attached two letters from her attorney, Simpson, to USAA and a letter to same from Cornell requesting information pertinent to Mrs. Wright's estate.
3. On June 8, 2015, Cornell provided a written supplemental response. She has been named as Co-Trustee of the Trust with Mrs. Wright since May 29, 2013. Cornell was named to act as Mrs. Wright's Personal Representative in a Codicil, dated May 9, 2013, to her pour-over Will. Mrs. Wright passed away on August 13, 2014. Cornell said she and Simpson met with Wright and Alan on August 15, 2014, and explained the Trust and answered questions regarding the Trust and amendments including the provisions for Alan to remain in the residence as well as Harry Wright's ("Harry") [Mrs. Wright's grandson] ability to stay there as often as he wished. Cornell said on August 18, 2014, she again met with Wright and discussed Trust provisions. She also referred Wright and Alan to a realtor so they could get an estimate on the current value of the home. The realtor provided an informal appraisal and noted maintenance issues that were likely needed prior to sale of the property. Cornell stated that many of Wright's inquiries over ensuing months were focused on preparing the house for immediate sale despite the residence not being for sale.

Cornell said Simpson mailed follow up letters to Wright and Alan on September 22, 2014, outlining the roles of Trustee and Personal Representative and Wright was told that he was entitled to annual accounting reports. The letter provided notice of Cornell's powers, duties, authority and responsibilities regarding the property maintenance and expenses. Wright requested a detailed year end accounting report via email four times between January 3 and 14, 2015. Cornell said although the Trust terms allowed for a year end accounting in August 2015,

she prepared a preliminary income and expense report covering the period September 1, 2013, through January 16, 2014.

The Division notes that the accounting provided by Wright in his complaint covered the period from September 1, 2014, through January 16, 2015.

Cornell said Simpson mailed the accounting to Wright and Alan with an explanatory letter to Wright acknowledging his numerous emails and reminding him that responses would have unnecessarily penalized all estate beneficiaries for the associated costs. Cornell stated that the Trust is small and that Wright did not have oversight powers or the authority to force unnecessary maintenance. And because the Trust had been explained to him in great detail, in writing and verbally, Cornell said she decided not to respond to Wright's frequent emails opining that it was not in anyone's best interest to engage in time consuming and potentially costly dialogues on purchasing toilets, getting rebates, and cleaning roofs. Cornell said Wright mailed her a certified letter on January 31, 2015, which she received on February 5, 2015. She said it was "crossed in the mail" with a letter Simpson sent Wright on January 28, 2015. Wright requested that six pieces of information sent to him, two of which Cornell said she already answered in the attorney's correspondence.

Simpson referenced delays caused by USAA that impeded Cornell's ability to provide a full beginning inventory. Wright also wanted to know whether the roof was cleaned and repainted and whether two toilets had been replaced. Cornell said Wright was in regular email correspondence with Alan whom resided in the home and from whom Wright should have received information so there was no benefit to the estate by responding to Wright. Further, Cornell believed that there was no foreseeable benefit to the estate in providing detailed explanations on the cost benefit analysis of the toilet rebate or the necessity of internet and cable for Harry's on-line classes.

Regarding the alleged lack of investigation of Trust assets, Cornell said she was still in the process of authenticating payable on death designations on family assets. When Mrs. Wright died USAA informed Cornell that there were three accounts with payable on death designations that transferred outside the Trust. Cornell initially had no reason to question the designation but subsequent communications with Wright and Alan made her doubt whether the instruments had initially designated the Trust as beneficiary but had later been diverted so Cornell was forced to open a probate to gain further information. USAA provided documentation showing that Mrs. Wright made two highly questionable changes in beneficiaries without telling anyone both of which eliminated other trust beneficiaries and benefitted Wright. Cornell said at the time of her letter to the Division, USAA still owed her additional information under her formal request to them. She said Mrs. Wright's first change in beneficiary was made on December 26, 2011, barely two weeks after her husband died and when she was bedbound under 24 hour care. The other change occurred online, four months later, allegedly

by Mrs. Wright who was 92 year years old, computer illiterate and did not have assistance or passwords to access the account. Her method of communication with USAA had previously been in long hand correspondence or by telephone to customer services.

Regarding allegations of questionable and unexplained expenses, Cornell said that Wright does not have authority to challenge every trust expenditure made for a nominal amount as it occurs. His specific inquiries about estate expenditures could only have been based on unauthorized access to the estate accounts at USAA. Cornell contacted USAA on three occasions to tell them that he had access but USAA assured her that he did not. Cornell opined that responding to each enquiry challenging expenditures was not required and was not beneficial to the estate's contingent beneficiaries in the long run.

Regarding allegations of questionable moving of Trust assets, Cornell said that in order to limit Wright's unauthorized access to the Trust's bank accounts she moved the savings and checking accounts from USAA to National Bank of Arizona. She said a Trustee does not have a duty to inform contingent beneficiaries when transferring financial accounts to a new institution. She said she maintains full accounting records of Trust assets and will provide them to beneficiaries at appropriate intervals or upon written request under Arizona statutes.

4. On October 2, 2015, Investigator Fontana conducted a telephonic interview with Wright. He said two days after his mother died Wright and Alan met with Cornell and Simpson and they reviewed the amendments to the original Trust. Wright said it was somewhat difficult to follow Simpson's explanations about which articles of the Trust applied or did not apply in context of the original Trust and the restated Trust. Wright said "for some reason" his mother decided in 2003 that her grandson, Harry, currently 17 years of age, was entitled to live in the home until he turned 19 years old or graduated from school before his 19th birthday with the stipulation that he must live there with his father, Alan. If that arrangement changed Harry would go live with his mother and the property would be sold.

Wright said he has continually asked Simpson and Cornell to point out what section of the Will that Alan and Harry's personal expenses will be paid for by the Trust. His reading of the Trust is that it pays for property maintenance, repairs, taxes, home owner's fees, and insurance so he believed that anything outside of that meant "they are on their own." Wright said despite his numerous requests he has not received an answer about this adding that he was somewhat annoyed by Simpson who told him that every time he asks those questions it causes unnecessary expenses to the Trust although Wright thought his questions could be answered simply and directly. He said that it was inappropriate for Cornell to ignore his requests and believed that she is obligated to address his concerns because she "indirectly" works for the beneficiaries of the Trust.

Regarding unexplained and questionable expenses, Wright identified concerns with some of the expenses paid by the Trust, as reflected in the accounting for the period from September 1, 2014 through January 16, 2015. Overall, Wright did not like the legal and fiduciary costs but he specifically questioned the following expenses:

- Fuel charges of \$149.68 incurred by Alan
- Department of Veterans Affairs medical bill for \$353.06 incurred by Alan
- Four Comcast charges:
 - \$433.22 on October 3, 2014
 - \$232.95 on November 7, 2014
 - \$217.46 on November 26, 2014
 - \$159.14 on January 7, 2014

Wright said he tried to clarify the Comcast bills but Cornell ignored him. His interpretation of the Will concerning the property and Harry's ability to stay in the home was that it would pay for maintenance of the home but it did not mention anything else. He said Simpson told him that Harry is doing his schooling via the internet and as long as he lives in the home the Trust should pay for internet or for him to watch movies.

Regarding questionable moving of Trust assets, Wright said after his father died in 2011 his mother asked him to take over the finances and told him to let her know about any expense over \$200.00 monthly. Wright said he has his mother's permission and signed a Power of Attorney document and whatever else the bank required in order for him to control the accounts. Wright contacted USAA and set up an alert on the account. Per that alert, USAA notified Wright that \$155,168.21 was moved and transactions of \$4,517.91 and \$4,693.17 were also completed. At that time Wright did not know what the money was being used for so he considered that to be "questionable." He asked Alan if he had any knowledge of it but the two brothers are not on talking terms. Wright said he now understands that Cornell transferred the \$155,168.21 from the USAA account into a new account because she accused him of having access to the account. Wright said he was able to view information on the account but denied accessing any money from his mother's account. The two transactions for \$4,517.91 and \$4,693.17 were for legal and Trustee fees respectively. Wright denied that any money was missing or was otherwise unaccounted for.

With respect to his allegation that Cornell failed to investigate Trust assets, Wright said years ago his parents established three annuities but they did not name beneficiaries. At one point and without Wright's knowledge his mother made changes to the annuities and she added Wright and Alan as beneficiaries with benefits payable upon death. Wright claimed that he only learned of this after his mother died. The brothers decided to each cash the larger annuity which paid approximately \$105,000.00, tax free, and the two smaller annuities were to remain and provide monthly income until they expired or "ran out." Wright exercised his

option and despite Alan agreeing to do the same he has yet to take action. Wright said Cornell has accused him of “doing something sinister” related to changing the beneficiary designation. He said Cornell took over as Trustee months before his mother died so Cornell had plenty of time to learn about these annuities and who was designated as beneficiaries.

Regarding the Trustee’s fee schedule Wright said he did not know if he requested one from Cornell but said he did query Simpson after she sent him a letter saying that his questions were causing “unnecessary expenses.” Wright said Simpson did not respond to him.

Regarding his assertion that Cornell failed to account for expenses, Wright was referring to receiving accounting information and he acknowledged that they sent him the September 2014 to January 2015 accounting. Simpson informed him that the Trust was only required to provide an annual accounting.

5. On November 24, 2015, Investigator Fontana conducted a telephonic interview with Cornell, Simpson; and Cornell’s assistant, Cannon. Regarding the allegation that Cornell took months to respond to or failed to respond to Wright’s inquiries, the Division reviewed 10 (ten) emails Wright sent to Cornell and/or Simpson, between November 6, 2014, and January 14, 2015, and also referenced a certified letter Wright sent Cornell, dated January 31, 2015, all which Wright alleged went answered. In that correspondence Wright asked various questions including whether the Comcast cable and “entertainment” costs should be paid by the Trust.

Asked how Wright’s queries were addressed Simpson said that the “response given” was that Harry needed online access to do his homework and to watch movies when he was at the residence and opined that these were not an “untoward expense” to the Trust. She said during that first meeting in August 2014, the parties discussed the terms of the Trust and the parties were informed that Cornell was given discretion to maintain the house as it had been prior to Mrs. Wright’s death.

Cornell stated that they met with Wright and Alan for two and a half hours two days after Mrs. Wright died and “went over this Trust and what this was going to look like.” Cornell said Wright “got on that Comcast issue over and over again.” When they first met he wanted clarification and then again in his emails but Cornell said they reviewed the Trust and clarified to him that the house was to “remain the same for Harry if he decided to stay there” meaning that “walking into that house” was going to be the same with the exception that his grandmother would no longer be there. Harry was charging for movies and the cable bill was roughly the same now as it was when Mrs. Wright was alive.

Cannon added that the October cable bill of approximately \$400.00 was for payment for over two months because there was a transition period before the fiduciary’s office was able to get the bills and pay them so there was a period of time that the checking account was frozen and they did not have access to the funds.

Cannon said the monthly cable bill was not unusual and was consistent with earlier bills and they negotiated with Alan, possibly in September or October, to reduce the telephone or cable service in order to cut costs.

Cornell commented that the estate is a small one and, other than an annual accounting, the Trust did not call for providing Wright with a monthly update of expenses. She said at the first meeting in August, Wright was given a beginning inventory and they reviewed the Trust terms and what it would “look like” so giving him a monthly accounting was unreasonable. Cornell believed Simpson’s September 22, 2014, letter to Wright addressed the cost benefit to the Trust to which Simpson replied, “Perhaps I was too subtle in my correspondence” with Wright. Cornell maintained that she stated her position at that first meeting when Wright was informed that the Trust was going to maintain the house as things were prior to Mrs. Wright’s death; and, combined with Simpson’s letter to Wright, telling him that the Trustee would make all decisions regarding maintenance and upkeep of the house and Trust assets and that the Trustee would establish reasonable parameters to ensure that Mrs. Wright’s final wishes would be fulfilled, Wright was sufficiently informed.

Cornell asserted that prior to Mrs. Wright’s death, Wright was “constantly” questioning his mother about her spending her own money so Cornell decided that she was “not going to get into that loop with him.” She said while they may not have been clear with Wright and did not use the word “Comcast” they told him that the household would remain the same adding that “constant feedback with beneficiaries” would not be cost effective to the estate and she was not prepared to “get into that minutia with him” regarding whether or not she got a \$20.00 rebate on a toilet or whether she would pay the Comcast bill.

Regarding the allegation of questionable expenses Cannon said the two fuel charges Alan incurred for a total of \$149.68 was a reimbursement to him. She said Alan’s Department of Veterans Affairs medical bill for \$353.06, was incurred prior to Mrs. Wright’s passing in August 2014, and was paid in October 2014. Cornell agreed that the medical bill was incurred prior to Mrs. Wright’s death and Simpson added that if this was a bill from prior to Mrs. Wright’s death the Trust would have been responsible for it if that was how it had been paid previously. Simpson said when Mrs. Wright had charge of her own money she had the discretion to pay Alan’s bills and at times she did. Simpson said she knew this was the case from casual conversations she had with Mrs. Wright including her describing occasions when Alan would have to see a doctor or take her to medical appointments. Cornell did not have those conversations with Mrs. Wright but said there is substituted judgment and that if Mrs. Wright’s position was that in exchange for Alan living at the home and not working she was going to take care of his medical bills and if the bills happened prior to Mrs. Wright’s death then Cornell would honor that.

Cornell said she became aware that Wright seemed to have access to a USAA bank account because he was able to monitor expenses but when she contacted USAA

about this Cornell was told Wright did not have access. Cornell transferred funds from that USAA account into different account to ensure that Wright did not have access. She said that Wright did not take any money from the account.

Regarding the allegation that she did not know about the annuities payable upon death, Cornell said she was aware of those annuities and noted them on the inventory including a beginning inventory she provided Wright in August 2014. Cornell said the annuities would not have been part of her Trust accounting because they were payable upon death. Simpson said she was concerned because prior to Mr. Wright's death he left 15 hand written pages to Mrs. Wright about what to do when he died. He indicated that the annuities were to be divided three ways, one third to Wright, one third to Alan, and the other third to Alan's children. Shortly after Mr. Wright died this was "mysteriously changed" to delete Alan's children as beneficiaries and they know that Mrs. Wright was "illiterate" on the computer so the circumstances were suspicious. Cornell said it has been very difficult to obtain any information from USAA regarding this matter. Her office opened a probate and did everything they could with USAA but because the changes were partially done online there were impossible to track. Simpson said it would not be cost beneficial to the estate to litigate this or pursue it further.

Regarding a fee schedule Cornell said she discussed her fees with Mrs. Wright prior to her death but did not discuss her fees with Wright or Alan then said it was likely that the topic of her fees was talked about when she first met with the two brothers after Mrs. Wright died. Simpson said she thought the issue of fiduciary fees was discussed because everything the Trustee did cost the estate.

Regarding Trustee fees, Cornell said the Trust stated that "reasonable fees" would be compensated by the Trust. The fiduciary billing showed fees of \$4,693.47 from August to December 2014; and up to May 2015, charges were \$4,191.00, for a total of \$8,885.05 from that identified time period. Asked if there was language in the Trust that allowed for compensating the fiduciary or paying legal fees to respond to or defend a regulatory complaint, Simpson stated that she has never seen a Trust that included that language and said she would be surprised if there was any such language in the Trust. Simpson was not involved in the creation of the Trust but did complete the 3rd Codicil to the Will. Investigator Fontana pointed out that Cornell's billing showed that she charged the estate for matters relating to a response and defense of the regulatory complaint; and that Simpson's bills, pursuant to invoice number 20198, also reflected billing related actions the attorney took regarding the complaint against Cornell.

6. On November 25, 2015, Investigator Fontana conducted a telephonic interview with Alan and his attorney, Egbert. After his mother died, Alan said there was a three hour meeting that included himself, Wright, Cornell and Simpson. Cornell and Simpson discussed their roles and what they were going to do regarding the Trust, talked about their fees and also went over the Will "step by step." Alan then said that they may not have specifically talked about their professional fees. Asked

if there was any discussion about the Trust paying monthly bills such as cable, internet and telephone, Alan said his father had the cable and internet put in for Harry and the “deal” was that this would continue as to not change anything for Harry. Alan said the cable and internet bill was about \$160.00 or \$180.00 monthly and the invoice goes to Cornell. He said he pays for per view movies, at \$3.00 per movie, using his own credit card.

Alan said that during the first meeting they had with Simpson and Cornell there were assurances made that there would be no lifestyle change for him and his son, Harry. That conversation included Wright but he did not say “much of anything” at the meeting and he did not raise any objections until afterward. Wright later started to talk to Alan because Wright was not “thrilled the way it went” and he wanted to see if it could be changed. Alan said Wright had been at odds with their mother over the past several years because of the terms of the Will and he was unhappy. Alan said he was not about to negotiate anything with Wright because everything was written up in the Will.

Regarding the Trust paying Alan’s Veterans Affairs medical bill he said his mother paid his medical bills in past because he was living in the home and taking care of her on a full time basis. Her doctor had “prescribed” that someone be in the home 24 hours daily so Alan said he became her caregiver because it was less expensive than hiring a full time caregiver or placing his mother into an assisted living facility. However that arrangement meant that Alan was unable to work full time so his mother helped him by paying his medical bills.

ANALYSIS OF ALLEGATIONS:

Allegation 1: Complainant alleges Phyllis Cornell took months to respond to his inquiries and she did not respond to his certified letter

The Trust has provisions for Alan’s son, Harry, to remain in the home as he wished until he reaches the age of majority or graduates from high school.

A review of the Third Amendment to the Restatement Dated October 8, 2003 of the Wright Family Trust Dated February 12, 1997, Article IV, Paragraph C (1)(a) states:

- a. If Harry chooses to remain in the home, then he shall occupy it, rent-free, with this trust estate continuing to assume the financial responsibilities **for the running of the household** [emphasis added], including maintenance, taxes, utilities, repairs, fees, insurance(s) **and other related costs** [emphasis added].*

Wright alleged Cornell ignored his repeated email inquiries regarding his question about whether the Trust should pay for cable and internet.

By all accounts a meeting was held several days after Mrs. Wright died which included Cornell and Simpson, Wright and Alan. At that meeting Cornell and Simpson reviewed the Will and amendments to the Trust, discussed the Trustee's role and responsibilities, and there was some conversation about maintaining the household in the same manner as it was prior to Mrs. Wright's death.

Cornell said that while she may not have used the words "Comcast" when discussing the Trust with Wright she fully informed him about her role and responsibilities as Trustee and Personal Representative and she told Wright that the household would be maintained and managed as it was prior to Mrs. Wright's death in accordance with her wishes. Cornell also referenced written correspondence from Simpson to Wright, dated September 22, 2014, that further explained the matter. Cornell said the cable and internet costs were paid by Mrs. Wright and this arrangement continued after her death as part of maintaining the household as it was for Harry and Alan.

Simpson's letter to Wright, dated September 22, 2014, stated, in pertinent part:

"...the Trust will make all decisions regarding maintenance and upkeep regarding the house and trust assets and will establish reasonable parameters to ensure that Ruthe's [Mrs. Wright] final wishes are fulfilled, to ensure that the Trust continues to fulfill its intended purpose, and to maintain and optimize value for remainder beneficiaries."

An email from Simpson to Wright, dated September 26, 2014, stated, in part...

"Harry has decided to continue as he did when his grandparents were alive and stay at the house on the same terms as he has been doing for the last several years."

Wright's concern, as noted in Allegation 1, was whether the cable and internet bill should be paid by the Trust and he questioned the merits of this over several emails to Cornell and Simpson. The Trust, per Article IV, Paragraph C (1)(a), provides that the Trust Estate assumes "the financial responsibilities **for the running of the household...and other related costs** [emphasis added]. "Running of the household" and "other related costs" was not defined. The Division believes Cornell has a reasonable argument that the expenses may be paid by the Trust. While a court may ultimately determine that such expenses do not include cable and internet, Division staff does not believe payment of those expenses rise to a violation of the ACJA.

A.R.S. 14-10813(A) outlines the Trustee's duty to inform and report to beneficiaries, stating:

A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a

trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

Although neither Cornell or Simpson replied to Wright's 10 (ten) emails from November 6, 2014, to January 14, 2015, Cornell believed that Wright was fully informed on the terms of the Trust, his mother's wishes regarding maintaining the household, and Cornell's role and responsibility regarding the decision making on behalf of the estate. She did not want to engage in ongoing correspondence with Wright regarding minor expenditures because she deemed it was not cost beneficial to the estate. It may have been reasonable for Cornell to respond to one of Wright's ten emails regarding the cable and internet costs but it appears that information had been shared about the terms of the Trust and the administration of the Trust therefore Mrs. Wright's intentions were relayed to Wright and Alan. As such, the Division does not believe that Cornell's handling of this issue rises to the level of misconduct, breach of duty, or a violation of the ACJA. Therefore, Allegation 1 is not substantiated.

Allegation 2: Complainant alleges Phyllis Cornell paid for questionable and unexplained expenses

Wright specifically questioned the Comcast (cable, internet and telephone) bill, two fuel charges and a Veterans Affairs medical bill incurred by Alan. The cable/internet bill was previously addressed in the analysis contained in Allegation 1.

Cornell claimed that the \$149.68 in fuel charges were incurred prior to Mrs. Wright's death and the Trust reimbursed Alan for returning medical equipment, meeting with his mother's doctor, and cleaning out the garage and making trips to the landfill. A review of the receipt for fuel in the amount of \$99.68 was incurred on and after Mrs. Wright died. Cornell did not have the receipt for the second charge of \$50.00.

In his interview with the Division, Alan stated that he had an arrangement with his mother whereby she paid for his medical bills because he was living in the home taking care of her and he was unable to work full time. This arrangement was also more feasible than hiring a full time care giver or placing Mrs. Wright into an assisted living facility.

A review of a copy of the medical bill for \$353.06, showed that the bill was for medical services provided on June 20, 2014, July 2, 2014, and July 7, 2014, all incurred prior to Mrs. Wright's death.

A review of Cornell's Profit and Loss Detail for the period from November 1, 2012, through May 21, 2015, showed 35 charges identified as "Medical Alan" for medical related bills from December 12, 2012, to October 10, 2014. Cornell said she relied on "substitutive judgement" so the Trust would honor bills that Mrs. Wright covered while she was alive.

A review of the Trust, dated February 12, 1997, Article IV (B) (1), MANAGEMENT AND DISTRIBUTION OF SURVIVOR'S TRUST, Payment of Estate Taxes and Expenses states, in pertinent part:

...The Trustee shall pay...the debts...liabilities and expenses of administration of, and claims against..."

A review of Mrs. Wright's Will, September 1, 2009, Article III (A), Payments and Distribution states, in pertinent part:

A. My personal representative shall pay...costs of administration including ancillary...and other proper charges against my estate (excluding debts secured by real or personal property or life insurance; and my personal representative may receive reasonable compensation for services on behalf of my estate.

Wright alleged the aforementioned expenses were "questionable" and "unexplained." The Division did not find evidence that indicated that the bills referenced appeared to be unexplained or suspicious in nature. The medical bill referenced seems to be consistent with the medical bills previously paid by Mrs. Wright over the past several years. Cornell indicated that the Trust recompensed Alan \$149.68 total for two separate fuel charges that he incurred to return medical equipment, meet with his mother's doctor, clean out the garage and make trips to the landfill. These costs do not appear to be exorbitant. The Division believes that Cornell acted within her authority as Trustee to cover estate expenses, per the Trust. Therefore, Allegation 2 is not substantiated.

Allegation 3: Complainant alleges Phyllis Cornell failed to properly investigate Trust assets

Wright's assertion is that Cornell was not immediately aware of three annuities with payable upon death designations.

Cornell said she was aware of the annuities and although she listed them in her inventory and accounting and that she did not have to account for them after Mrs. Wright's death because the annuities were payable upon her death.

A review of an Excel spreadsheet filed as Beginning Inventory, dated August 13, 2014, identified three USAA accounts with payable upon death designations, one was listed as an IRA and two as annuities. A review of the annual accounting for the period August 13, 2014 to August 31, 2015, lists the same documents.

A review of Cornell's Professional Services, Invoice 12654, dated December 31, 2014, billed to the estate, shows billing on July 11, 2014, for a conference call to USAA regarding annuities; August 2, 2014, for emails from Alan and Wright regarding annuities; and August 14, 2014, for discussing the IRA account and Wright as sole beneficiary. Mrs. Wright died on August 13, 2014. Billing for work on the beginning inventory was entered on August 15, 2014.

The Division found no evidence that supported the allegation contained herein. Therefore, Allegation 3 is not substantiated.

Allegation 4: Complainant alleges Phyllis Cornell questionably moved Trust assets

Wright said that prior to his mother's death and with her knowledge and consent, he set up an alert on the USAA bank accounts to notify him of any expenses over \$200.00. Wright was alerted to three separate transactions on the accounting:

- \$4, 517.91
- \$4,693.17
- \$155,168.21

Initially, Wright did not know what those transactions were so he contacted Alan to find out. Wright described those expenses as "questionable" because he had no information on what that money was used for. Wright later learned that the \$4, 517.91 was for legal fees, the \$4,693.17 for fiduciary fees. Regarding the \$155,168.21 transaction, Wright said Cornell transferred that money from the account into a different account apparently because she had concerns that Wright could access the account.

The Division found no evidence to support the allegation contained herein. Therefore, Allegation 4 is not substantiated.

Allegation 5: Phyllis Cornell charged fiduciary fees and allowed legal fees to be charged to the estate to respond to and defend a regulatory complaint

ACJA §§ 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).

ACJA § 7-202(J)(1)(a):

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

§ 7-202(J)(5)(j):

j. The fiduciary shall ensure that all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary, are reasonable in amount, necessarily incurred for the welfare of the protected person, and in compliance with ACJA § 3-303.

§ 7-202(J)(7):

7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

§ 3-303(D)(2)(l):

D. Use of the Fee Guidelines.

1. Compensation of the Professional. Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:

l. Time or expenses to respond or defend against a regulatory complaint against the professional and the professional's licensed business entity are not billable to the Estate.

A review of Cornell's professional services reflected billing, dated March 23, 2015, for 1.25 hours at \$160.00 per hour, to pick up certified letter with Wright's complaint filed with the Division, read letter, reviewed complaint and called Trust attorney. The estate was billed \$200.00. An entry, dated March 24, 2015, showed billing for \$16.00 to review Statement of Informal Probate of Will and Appointment; and on March 26, 2015, Cornell billed the estate \$64.00 to print Alan's email from Wright as pertaining to his complaint.

Simpson's billing, per invoice number 20198, dated October 31, 2015, showed charges for professional services rendered on October 15, 2015, October 26, 2015, and October 29, 2015, for complaint related matters. In total, Simpson charged the estate \$342.00.

Cornell's correspondence to the Division, dated December 2, 2015, regarding her responding to and defending the complaint, verified that she charged the estate \$200.00 for services on March 24, 2015, and \$64.00 on March 26, 2015, and that the estate paid for those charges. Cornell further stated that she was going to credit those charges to the estate on her next billing. With respect to Simpson's billings Cornell said the Trust paid the legal fees pursuant to A.R.S. 14-10816.

A review of A.R.S. 14-10816 did not reveal any language regarding paying the attorney for services rendered in connection to the Trustee responding to or defending a regulatory claim.

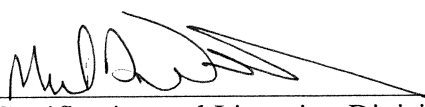
The Wright Family Trust's Article VI, Powers of Trustee, Sub-clause I, in pertinent part, allows the Trust to pay "reasonable compensation to the Trustee for services hereunder, and to employ and compensate attorneys, accountants, and agents." The Trust does not contain specific verbiage that allows for the Trust to pay the Trustee to respond to or defend any regulatory complaint against the Trustee. Therefore, Allegation 5 is substantiated.

SUBMITTED BY:


PASQUALE FONTANA, Investigator
Certification and Licensing Division

12/15/15
Date

REVIEWED BY:


Certification and Licensing Division

12/15/15
Date

DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number **15-0006**, the Probable Cause Evaluator:

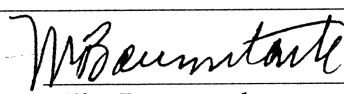
☐ requests division staff to investigate further.

☒ determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

#s 1, 2, 3 & 4.

☒ determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

5

 12/21/15
Mike Baumstark Date
Probable Cause Evaluator

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Phyllis Cornell
	Certification Number:	20217
	Business Name:	Phyllis Cornell Private Fiduciary, LLC
	Certificate Number:	NA

Recommendation:


It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Phyllis Cornell has not committed the alleged act(s) of misconduct as detailed in Allegations 1, 2, 3, and 4 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0006.

It is further recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Phyllis Cornell has committed the alleged act(s) of misconduct as detailed in Allegation 5 of the Investigation Summary and Allegation Analysis Report in complaint number 15-0006.

It is recommended the Board dismiss the complaint as to Allegations 1, 2, 3, and 4 and as to Allegation 5 enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA §§ 3-303(D)(2)(l), 7-202(J)(5)(j) and 7-202(J)(7) by charging the estate attorney fees incurred for the purpose of defending the fiduciary against a complaint.

It is further recommended the Board issue a Letter of Concern.

SUBMITTED BY:

 1/4/16

Director Date

Certification and Licensing Division

FINAL DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 15-0006 and Phyllis Cornell, certificate number 20217, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

☐ requests division staff to investigate further.

☐ refers the complaint to another entity with jurisdiction.

Referral to: _____

☐ dismisses the complaint, and:

☐ requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).

☐ requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).

☐ determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:

☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.

☐ enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).

☐ requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).

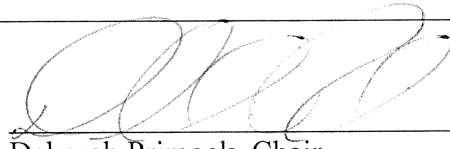
☐ orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).

☐ enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: _____

☒ adopts the recommendations of the Division Director.

[] does not adopt the recommendations of the Division Director and orders:



Deborah Primock, Chair
Fiduciary Board

1/14/16
Date



Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Scott Bales
Chief Justice

January 14, 2016

David K. Byers
Administrative Director
of the Courts

Phyllis Cornell

RE: LETTER OF CONCERN - Complaint Number 15-0006

Dear Ms. Cornell:

On January 14, 2016, the Fiduciary Board ("Board"), pursuant to the Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a), (H)(7), and (H)(24)(a)(6)(a):

1. Reviewed the attached Investigation Summary, Probable Cause Evaluation Report, and Recommendation;
2. Entered a finding grounds for discipline exist in this complaint;
3. Ordered resolution of the complaint through an informal disciplinary sanction; and,
4. Entered the enclosed Order to issue this Letter of Concern as to Allegation 5 only.

ACJA § 7-201(H)(24)(b)(2) provides:

A letter of concern is a written informal discipline sanction and is not appealable. A certificate holder may file a response to the letter of concern no later than fifteen days after the date of the letter of concern. The certificate holder's response is public and division staff shall file the response in the complaint file.

If you choose to submit a written response, please address it to the Board. Pursuant to ACJA § 7-201(H)(1)(g) and (H)(24)(b)(2), this Letter of Concern and your response are not confidential.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Primock", is written over a horizontal line.

Deborah Primock, Chair
Fiduciary Board

Enclosures